

REMARKS

This is in response to the Office Action dated July 6, 2005 in which Claims 7-9 and 24 were objected to, Claims 1-6, 15, 17-20, 22, 25-33 and 51-64 were rejected and Claims 10-14, 21, 23, 34-50, 65 and 66 were identified as withdrawn.

Restriction

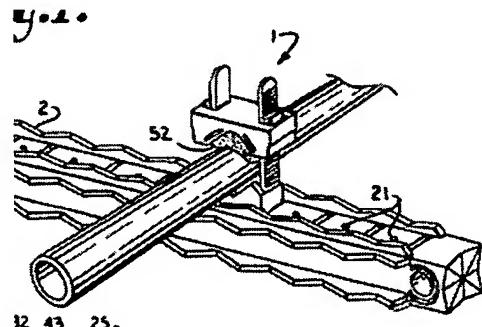
A restriction was imposed based on method and apparatus, with the applicant electing the apparatus claims without traverse. Method Claims 37-50 were withdrawn.

A species restriction was also imposed and the applicant elected Group 1, Figures 1-17 and 25. Claims 1-9, 15-20, 22, 24-33 and 51-64 were considered readable on the elected species. Claim 25 was identified by the Examiner as generic.

The applicant has withdrawn the non-elected species claims but believes generic claims are allowable and that withdrawal is not needed.

Section 102 Rejection

Claims 1-2, 3, 5-6, 17-20, 22, 25-33 and 51-62 were rejected as anticipated by Patent No. 6,126,122 to Ismert. Ismert shows an "optional resilient pad 52" to cushion the pipe Col. 4, line 67 & Fig. 1.



Independent Claims 1 defines a cap, and Claims 25 and 62 define cap means. The claimed cap is not met by Ismert's pad. The independent claims are amended to clarify that the cap is not a pad.

Claims 51-62 were rejected as reciting limitations narrower than but "similar to" Claims 1-3, 5-6, 17-20 and 22 and thus being anticipated by Ismert. Anticipation requires the limitation be identically found in the cited reference. Amended Claims 51-62 define a flange integral with the base, and that is not found in Ismert. In contrast, Ismert teaches a two-part, sheet metal adaptor with a screw holding the sheet metal to the clamp 1. Col. 5, Col. 10-25. Making those sliding parts integral with the base would defeat the purpose and use of those moveable parts in Ismert.

Reconsideration and allowance of the claims is respectfully requested in view of the above comments and amendments.

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Response to Office Action of July 6, 2005
Attorney Docket: HENTE-088A

Section 103 Rejection

Claims 4, 15 and 63-64 were rejected as obvious over Ismert.

These claims depend from claims that are allowable as discussed above, and thus these dependent claims are also believed allowable for the above-discussed reasons.

Further, no prior art is cited for the proffered obviousness rejection. Neither the Examiner nor the Board can rely on such unsupported conclusions of unpatentability:

As an administrative tribunal, the Board clearly has expertise in the subject matter over which it exercises jurisdiction. This expertise may provide sufficient support for conclusions as to peripheral issues. With respect to core factual findings in a determination of patentability, however, **the Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.** To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise. [*In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (emphasis added)].

If the obviousness rejection is maintained the Applicant requests citation of a prior art reference which may be addressed and rebutted by the Applicant.

Reconsideration and withdrawal of the obviousness rejection is respectfully requested in view of the above comments and amendments.

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New Claims

New Claims 67-68 are added to further define the base. Antecedent basis is found in Figures 15-17 and the accompanying text. No new matter is added.

These dependent claims are believed allowable, and such allowance is respectfully requested.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

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